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No. 92-872

In The

Supreme Court of the United States

October Term, 1992

IBRAHIM FEZ GHASSAN,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

REPLY BRIEF OF PETITIONER

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In its brief in opposition, Respondent fails to rebut, or in many cases even to address, the arguments advanced by Petitioner. Respondent also seeks to mislead this Court, in claiming that the Attorney General "is considering" adopting a regulation that would resolve the split in the circuits over the holding of the Board of Immigration Appeals in *Matter of Cerna*, Interim Dec. No. 3161 (BIA 1991) (*see* Br. Opp. at 8 n.6).

This claim is purely speculative, and therefore without merit. It seems unlikely, in any event, that the future course of the Attorney General's office in immigration matters can be predicted, given the recent change of

administrations and the vacancy in the Immigration and Naturalization Service Commissioner's office. Indeed, Respondent's brief was probably written when the Attorney General position itself was vacant.

Respondent states that the alleged planned regulation arises from Section 545(d) of the Immigration Act of 1990 ("IMMACT"), Pub. L. No. 101-649, 104 Stat. 5066, which directs the Attorney General to issue regulations governing permissible timing and number of motions to reopen deportation proceedings (Br. Opp. at 8 n.6). There appears little reason to change the status quo in promulgating such regulations, however, since in a report to Congress mandated by IMMACT Sect. 545(c) (which is reproduced, along with a cover letter, at pages App. 92 to App. 98 of Petitioner's certiorari petition), the Attorney General found no abuse of motions to reopen by aliens, and no need for restrictive measures governing such motions. U.S. DEPT. OF JUSTICE, ATTORNEY GENERAL'S REPORT TO CONGRESS ON CONSOLIDATION OF REQUESTS FOR RELIEF FROM DEPORTATION (undated; cover letter dated May 31, 1991).

IMMACT Sect. 545(d) cannot serve as the basis for a regulation addressing the *Cerna* issue, in any event. The statute, in its entirety, reads as follows:

> (d) Regulations on Motions to Reopen and To Reconsider and on Administrative Appeals. – Within 6 months after the date of the enactment of this Act, the Attorney General shall issue regulations with respect to –
>
> (1) the period of time in which motions to reopen and to reconsider may be offered in deportation proceedings, which regulations include a limitation on the number of such

motions that may be filed and a maximum time period for the filing of such motions; and

(2) the time period for the filing of administrative appeals in deportation proceedings and for the filing of appellate and reply briefs, which regulations include a limitation on the number of administrative appeals that may be made, a maximum time period for the filing of such motions and briefs, the items to be included in the notice of appeal, and the consolidation of motions to reopen or to reconsider with the appeal of the order of deportation.

This language in no way implicates *Cerna*. The alleged proposed regulation would be ultra vires and hence invalid, under the circumstances. *U.S. v. Larionoff*, 431 U.S. 864, 873 (1977).

The petition should be granted.

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